

§ 541.99

the effective date of the removal was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of § 541.52 set forth above remains in effect pending further action by the issuing agency.

Subpart B—Interpretations

§ 541.99 Introductory statement.

(a) Section 13(a)(1) of the Fair Labor Standards Act, as amended, exempts from the wage and hour provisions of the act “any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 percent of his hours worked in the workweek are devoted to such activities).” The requirements of the exemption under this section of the act are contained in subpart A of this part.

EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE CAPACITY

§ 541.101 General.

The duties and responsibilities of an exempt executive employee are described in paragraphs (a) through (d) of § 541.1. Paragraph (e) of § 541.1 contains among other things, percentage limitations on the amount of time which an employee may devote to activities “which are not directly and closely related to the performance of the work described in paragraphs (a) through (d)” of that section. For convenience in discussion, the work described in paragraphs (a) through (d) of § 541.1 and the activities directly and closely related to such work will be referred to as “ex-

29 CFR Ch. V (7-1-97 Edition)

empt” work, while other activities will be referred to as “nonexempt” work.

§ 541.102 Management.

(a) In the usual situation the determination of whether a particular kind of work is exempt or nonexempt in nature is not difficult. In the vast majority of cases the bona fide executive employee performs managerial and supervisory functions which are easily recognized as within the scope of the exemption.

(b) For example, it is generally clear that work such as the following is exempt work when it is performed by an employee in the management of his department or the supervision of the employees under him: Interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing their work; maintaining their production or sales records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; apportioning the work among the workers; determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety of the men and the property.

§ 541.103 Primary duty.

A determination of whether an employee has management as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case it may be taken as a good rule of thumb that primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of his time in management would have management as his primary duty. Time alone, however, is not the sole test, and in situations where the employee does